Communiqué

May, 1999
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PRESIDENT'S REPORT

A Summary Report of Bencher Activities

This is my last Communiqué report to you. I wish to provide a brief wrap-up report on some of the issues the Benchers have dealt with this year and to comment on one significant thing I see on the horizon. I also wish to say a few words on how we, as Benchers, govern at the Law Society. We are dealing with a relatively new governance model… and it's working.

The Libraries

We now own and operate the Great Library and the rural libraries. On April 1, 1999, Manitoba Law Libraries Inc., a corporation without share capital, the sole member of which is the Law Society of Manitoba, took over full control of the operations of the libraries. Government funding will continue, in a decreasing amount, for the next five years at which time it will end. We now have the task of figuring out how to deliver a reasonable level of service to our members in a cost efficient way. The "virtual" library is undoubtedly the answer but it will require a great deal of effort and money. This will be an ongoing project.

Unauthorized Practice

At the April Benchers' meeting, we approved in principle a report on unauthorized practice. The report articulated the principles that establish the need for the protection of the public against unauthorized practice. The Benchers approved the report and agreed that a more active approach should be taken to stop unauthorized practice through negotiation and persuasion and, where appropriate through charges under The Law Society Act or by applying for injunctive relief. A further report was requested which is to analyze how the prosecutorial powers have operated in the past and is also to make recommendations on how to proceed with these powers in the future.

Title Insurance

This issue continues to be on the "front burner" at the Law Society. We are dealing with it on three separate levels. A joint committee of the Canadian Bar Association and the Federation of Law Societies is working on a three year project to put lawyers on a stronger footing in competing with title insurance companies. On a regional level, the four western provinces are in the process of finalizing a uniform certificate of warranty program that will allow a standard approach to closing transactions and reporting to financial institutions. This report is intended to allow for the immediate release of funds on closing in order to compete with the procedures of title insurance companies. On the local front, a committee of the Bar Association and the Law Society has been working with land titles officials to achieve a more streamlined process that would also allow for a release of funds on closing with minimal risk so as to simplify closing procedures. We are satisfied, for a variety of reasons, that the public is far better protected by having lawyers handle their real estate transactions. The initiatives that I have described are all intended to put lawyers in a stronger competitive position in their real estate dealings.

Incorporation of Professionals

Draft legislation has been presented to legislative counsel that will, when passed by the Legislature, amend The Law Society Act to allow lawyers to incorporate. Public protection is at the forefront of these amendments. The Law Society Act, Rules and the Code of Professional Conduct will all be equally applicable to professional corporations, as will negligence insurance and the defalcation provisions of our legislation. It is hoped that this legislation will be passed during the current session.

Multi-Disciplinary Partnerships

This is a big issue on our horizon. There is little doubt that multi- disciplinary parnerships will become far more prevalent in the future. The Federation of Law Societies will be dealing with a report on this issue at its August meeting. These partnerships present many challenges for the self governance of lawyers. On a general policy basis, the Benchers have had one preliminary review of the issue and have concluded that, provided that the public interest is properly protected, our rules should have sufficient flexibility so as to permit multi-disciplinary partnerships. Lawyers should be able to compete as freely in the marketplace as any other professionals. However, potential risks to the public posed by multi-disciplinary partnerships include problems with confidentiality, solicitor/client privilege, conflicts of interest, liability insurance, unauthorized practice and the enforcement of professional standards. These issues will all be addressed by the Federation of Law Societies in August. You can look forward to further reports from our Law Society on this issue in the near future.

Supreme Court of Canada

As you know, an historic event took place on April 30,1999. The Supreme Court of Canada came to Winnipeg as a group and participated in educational seminars with members of the Judiciary of Manitoba. We had the great honour of hosting a reception for them, in conjunction with the Bar Association. More than 400 lawyers attended and the feedback I have received is that the event was enjoyed by everyone, including particularly the judges of our highest Court.

Governance Model

I want to end with a few brief comments about how we run things at the Law Society.

Our governance model was first adopted in December 1995. Since then, the Benchers have focused their time and attention on "the big picture". We have considered carefully, from a policy perspective, what "ends" we expect the Law Society to achieve. While the "means" of achieving these ends or policy objectives are left to the staff, we delegate those tasks to them, we do not abdicate responsibility for them. We have already set a number of "executive limitations" on how the staff must carry out their tasks. We can always create additional executive limitations if we wish.

In addition, a vital part of the process is requiring the CEO to provide monitoring reports on a regular basis on all of the activities of the Law Society so that the Benchers can stay in touch with what is going on at the Law Society on a day-to-day basis and be satisfied that the priority objectives that we have set are being met. We have had several excellent reports from Allan Fineblit this year with a number of recommendations made by Allan and accepted by the Benchers which will improve the efficiency and effectiveness of the Law Society.

This governance model works well. It has required us to adapt our thinking away from some of the traditional tasks we expect to do as board members. For example, the Benchers do not actually approve the budget for the Law Society each year, a fact which took many of us some time to accept. However, again, executive limitations are imposed on our CEO as to how the budget is to be prepared and we can impose additional limitations if we wish.

I believe the end result of this new model is very positive. In the last few years the Benchers have been able to tackle long standing difficult issues like the unauthorized practice of law and we are well positioned to be able to grapple with emerging challenges like multi-disciplinary partnerships. We have recently conducted several thorough reviews of our major activities including continuing legal education, our complaints investigation process and our audit program and we have adopted a number of recommendations to improve these programs. At the same time, we have been pleased to note that our practising fees have dropped approximately 10%. The Benchers are now concentrating their efforts on the things they can handle best, namely deciding on major policy issues. We leave the running of the day-to-day affairs of the Law Society to the people who know how to do them best, namely our CEO and staff.

Having lived with this new method of operation for the last three years, I am satisfied that it works extremely well and I commend its continued use to the Benchers in the future.

New President Elected

Bjorn Christianson, Q.C., was elected as the 79th President of the Law Society of Manitoba on the 13th of May, 1999. Barney was called to the Bar in 1975 and appointed a Queen's Counsel in 1985. He is a partner with the firm of Christianson & Christianson, practising primarily in the areas of civil litigation, municipal and administrative law and child protection. Barney is Past President of the Manitoba Branch of the Canadian Bar Association. He is known for his colourful turns of phrase, which are being dutifully recorded for publication at a later date.

Ethical Dilemma?

C. Kristin Dangerfield, General Counsel

The Practice & Ethics Committee is a standing Committee of the Law Society of Manitoba which provides ethical advice and direction to members of the profession upon request. Meetings are held every six to eight weeks from September through to June. Typically the Committee will respond to a request for a ruling where the material facts are not significantly in dispute and where the parties agree to be bound by and comply with the Committee's ruling. In the course of the last year the Committee has canvassed issues ranging from whether a member is in a conflict of interest to whether a member has complied fully with trust conditions. The Committee invites members to submit requests for advice and direction, in writing, to the attention of Kristin Dangerfield.

AN IMPORTANT NOTICE ABOUT YOUR PROFESSIONAL LIABILITY INSURANCE

***Expiration of the Policy Year:* Speak Now or Forever Hold Your Peace**

Each year at this time, we put you on notice that coverage under the current Lawyers Professional Liability Insurance Policy expires on July 1 at 12:01 a.m., to be replaced by a new Policy of Insurance. At that time the Insurer shall be free from liability for all new claims and possible claims against members, except where the member has given written notice to the Insurer, during the 1998/1999 Policy period, of any circumstance which might give rise to a claim, however unmeritorious. The 1999/2000 Policy will not provide coverage for any occurrence which occurred prior to July 1, 1999, if, as of July 1, 1999, the Insured knew or could have reasonably foreseen that such occurrence would likely be the basis of a claim.

If you are aware of any circumstance which would likely subsequently give rise to a claim against you, you must give written notice of that potential claim to the Director of Insurance of The Law Society of Manitoba prior to July 1, 1999, the Policy expiry date. Notice can be given by completing a Professional Liability Insurance Claims Reporting form. Please contact the Professional Liability Claims Fund Program at 942-5571 to obtain Claims Reporting forms.

AN IMPORTANT NOTICE ABOUT INSURANCE CLAIMS OVER $1 MILLION

Excess Insurance 1999/2000 Policy Year

The Law Society of Manitoba Professional Liability Claims Fund provides mandatory coverage to insured members of one million dollars per claim with an aggregate coverage limit of two million dollars per lawyer per year. Excess insurance, providing additional coverage of up to four million dollars per claim, written by the Canadian Lawyers Insurance Association ("CLIA"), can be purchased through The Law Society of Manitoba. CLIA's standard Excess Policy will also provide "drop down" protection in the event of exhaustion of the two million dollar aggregate coverage under the mandatory insurance.

The new policy period for the additional coverage, or "excess insurance" begins July 1, 1999.

CLIA (a reciprocal insurance exchange between The Law Society of Manitoba and eight other Canadian provinces and territories) has been offering excess insurance to the legal profession in Manitoba since 1988. This year, CLIA will again issue a "retro-credit" to those law firms who have continuously purchased their excess insurance through CLIA. The retro-credit will reduce the excess insurance premium payable by eligible firms. For more information on excess insurance or to obtain a CLIA Excess Insurance Application, please contact Bonnie Harvey of our office at 942-5571.

CLIA EXCESS INSURANCE SCHEDULE	
Limit of Liability	**Premium Rate (Per Lawyer)**
$1,000,000 any one Occurrence $2,000.000 any one Policy Period	$325*
$2,000,000 an one Occurrence $4,000,000 any one Policy Period	$450*
$3,000,000 any one Occurrence $6,000,000 any one Policy Period	$575*
$4,000,000 any one Occurrence $8,000,000 any one Policy Period	$675*

*Total premium payable will be reduced by retro credit for eligible firms.

Bencher Meeting Highlights

The Benchers met on May 13, 1999. **Herb Peters** was elected as Vice-President of the Law Society of Manitoba. Herb was

called to the Bar in 1981 and practises general corporate and commercial law as a partner with Aikins MacAulay & Thorvaldson.

Tim Killeen and **Lori Spivak** were appointed Chairs of the Complaints Investigation Committees. **Bill Haight** will chair the Discipline Committee, **Garth Smorang** chairs the Equity Committee, **Gord Bates** chairs the Practice and Ethics Committee, **Sid Green, Q.C.**, chairs the Reimbursement Claims Fund Committee, **Campbell Wright** chairs the Professional Liability Claims Fund Committee and **Al Semchuk** chairs the Admissions and Education Committee.

Doug Finkbeiner, Q.C., ended his term as President and became a Life Bencher. **Colleen Suche, Q.C.**'s, term as Past President came to an end and she sprinted from the building lest someone try and put her on a committee of some sort. Doug's new status as a Life Bencher created a vacancy and **Paul Jensen** was appointed to fill that vacancy. (Paul was the candidate with the next highest number of votes.)

Other agenda items included a discussion of the Practice and Ethics Committee report on trust account rules related to the trust accounts of lawyers who practice in "independent associations". The Practice and Ethics Committee was directed to draft rules for consideration by the Benchers which will have the effect of imposing more stringent control of the signing authority over the trust accounts of those independent associations of lawyers.

Benchers also agreed to establish a special committee to review the discipline process. This will be the first such review in seven years.

Earl Kimmel, President of the Federation of Law Societies, attended the meeting and spoke about the work of the Federation over the past year.

Allan's Odds and Ends

- Did you know that six of the last eight Presidents of the Law society came from small firms and three of the last eight came from outside of Winnipeg? What is this world coming to?
- There are still a number of excellent **students** that need articling jobs. If you are considering hiring a student, we have their resumes. Contact our Legal Studies Department if you would like us to send them to you.
- A 32nd annual **Call to the Bar** ceremony will take place on Thursday, June 17, 1999 at Pantages Playhouse Theatre. You are invited. Madam Justice Robyn Diamond will be the speaker. The Ceremony will begin at 9:30 a.m. sharp. Please arrive at the Theatre by 9:00 a.m. and enter the building via the main entrance on Main Street. A robing room will be available in the lower level for those wishing to gown for the procession. If you want to take the bus from the Law Courts Building, please be there at 8:45 a.m.
- In the last *Communiqué* I listed some of the stars of the class of '81. Since then, I have heard from all of the stars I left out. **Tim Preston** and **Lea Baturin** were especially hurt because I had always told them they were the best articling students I ever worked with. Get a life Timmy, that was 18 years ago.
- We are sad to report that **Michelle Adrian**, one of our Complaints Investigators, will be leaving the Law Society to join the Federal Department of Justice. We are, however, pleased to announce that **Leah Mitchell**, formerly of Thompson Dorfman Sweatman, will be replacing Michelle.

Millennium Contest

It's not really a contest, it's more of an exercise in futility. Quick! Name the ten best Manitoba lawyers of all time. No, I really mean it. Now write it down and send it to me (phone, fax or e-mail is also good). I have assembled a distinguished panel, spanning several generations of practice, to come up with the list and we want your suggestions. Think expansively. Think litigators and solicitors. Think Winnipeg and think beyond. Think judges and academics. The panel's choices will be published in December and are guaranteed to make absolutely nobody happy.

Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Practising to Non-Practising:

April 1, 1999 Harold F. Gyles
April 1, 1999 Lorne G.C. Milne
April 1, 1999 George Tacik
April 1, 1999 Diane M. Kelly
May 1, 1999 Harold Cochrane
May 1, 1999 Colin S. Morrison

Non-Practising to Practising:

April 1, 1999 Joel H. Kay
April 1, 1999 David G. Newman
May 1, 1999 Robert J. Tropak
May 1, 1999 Nancy K. Koppang

Practising to Inactive:

December 31, 1998 Joseph A. Pollock
April 1, 1999 Jeffrey I. Harasym
April 1, 1999 Vaughan L. Baird, Q.C.
April 1, 1999 Robert A. Sigurdson
April 30, 1999 Scott B. Ransome
May 1, 1999 Jana Barak

Inactive to Practising:

April 1, 1999 Donna A. Brownridge
April 16, 1999 Timothy W. Chudy
April 22, 1999 Tanner F.D. Elton
May 3, 1999 Mary Ann Thompson
May 5, 1999 Carolyn D. Tramley

Transfer from Another Province:

Rodney G. Garson of the Law Society of The Yukon was called to the Bar of Manitoba on April 20, 1999 and is now entitled to practice law in this jurisdiction, having fulfilled the requirements of Rule 99.

Jeffrey M. Kuhl of the Law Society of British Columbia was called to the Bar of Manitoba on April 28, 1999 and is now entitled to practice law in this jurisdiction, having fulfilled the requirements of Rule 99.

In Memoriam

James Toal Died on February 14, 1999 at the age of 85. Mr. Toal was a retired police officer who later became the head of the Alcoholism Foundation of Manitoba. Mr. Toal was a Lay Bencher from 1974 to 1991.

Warren Dexter Besel ***Died on May 20, 1999 at the age of 45. Mr. Besel was called tot he Bar in June 1979 and practiced in the Whitemouth and Lac du Bonnet area for over 20 years.***

Notice

TAKE NOTICE that on Wednesday, the 28th day of April, 1999, the Discipline Committee of The Law Society of Manitoba found **RONALD KEITH BLACK** guilty of professional misconduct. The Discipline Committee reprimanded **RONALD KEITH BLACK** and ordered that he pay costs to The Law Society of Manitoba in the amount of $7,800.00.

ALSO TAKE NOTICE that **RONALD KEITH BLACK** provided an Undertaking to The Law Society of Manitoba to withdraw from the practice of law effective Wednesday, the 30th day of June, 1999.

DATED at the City of Winnipeg, in the Province of Manitoba, this 27th day of May, A.D., 1999.

Allan Fineblit, Q.C.
Chief Executive Officer

Peanuts and Cracker Jacks

Allan Fineblit, Q.C.

I recently ran across my elementary school Vice-Principal. I never knew her exact job description, but in my mind Mrs. Wiseman was Vice-Principal in charge of discipline. And I do mean discipline – as in the strap. Seeing her, almost 40 years later, I realized how much fear she had generated in my young life.

In particular, I remember wanting to play little league baseball. I needed my Vice-Principal's signature on the registration form. I was so terrified of her that I elected not to play that year rather than cross Mrs. Wiseman's path, even for purely innocent reasons. (Those who have toiled with me in the Bar Association baseball league have seen the impact of that lost year!)

I believe the Law Society suffers from the "Mrs. Wiseman" phenomenon. We too are in charge of discipline (although in my brief tenure here, I have yet to give anyone the strap) and my sense is that like Mrs. Wiseman, you'd rather have as little to do with us as possible, even if it means missing out on some fun.

I suspect Mrs. Wiseman was a nice enough person with a really unpleasant job to do. I suspect if I got to know her better, I would have been less afraid of her. Who knows, instead of writing articles for *Communiqué*, I might be playing short stop for the New York Yankees. Okay, okay, but at the very least I'd be able to make contact with one of Norm Gould's fastballs.

Now back to the Law Society. I was having lunch with a lawyer pal the other day and she was reciting her top ten list of things that are wrong with the Law Society (which I've only heard a dozen times in the year and a half I've been here). It occurred to me that she hadn't actually had any experience with the Law Society in the past ten years, good or bad. These were tales of woes long passed (probably legitimate grievances in their day) that had taken on the form of a Gregorian chant which she repeated as a kind of Pavlovian response every time she heard the words "Law Society".

I believe that the Law Society today is progressive, moderate and efficient. We are not perfect, but we're pretty darn good most of the time. Here is my challenge. Let go of the past. Give us a fresh look with an open mind and, if we do tick you off from time to time, don't write us off. Call me. I'll probably buy you lunch and I promise to leave the strap at the office.

Where Were You in 1972?

Allan Fineblit, Q.C.

This is the third in an ongoing series of articles inspired by a pile of old Annual Reports found in the basement. In previous issues we looked at the practice of law in 1960 and 1982. This month we ask the musical question: "Where were you in 1972?"

The list of Benchers in 1972 reads like a who's who list of the legal profession and includes Frank Allen, Harold Buchwald, Archie Dewar, Wilf DeGraves, Martin Freedman, Roy Gallagher, Bud Irving, Monty Israels, Art Rich, Perry Schulman, Vern Simonsen, Reeh Taylor, Harry Walsh, Rex Gilroy, Joe Haddad, Al Hamilton, Aubrey Hirschfield, Bill Pearson, Pat Ferg, Cliff Matthews and D.A. Duncan.

Irwin Dorfman was the President of the Law Society and Peter Morse was the Treasurer. The practising fees in 1972 were (sob) $120. That was the first year that Benchers' meetings were open to members of the Society.

Forty-seven students were called to the Bar in 1972, which brought the grand total of practising lawyers up to 772 (there are 1,700 today). Those were the days of giant law school classes. There were 126 students enrolled in first year law at the University of Manitoba.

In 1972 the Law Society was very involved in the transition from a Law Society based Legal Aid program to an independent Legal Aid corporation with a Board of Directors that included four First Directors nominated by the Law Society: Harry Walsh, Reeh Taylor, Ron Meyers and Roy Gallagher.

Where was I in 1972? Remember, this was the age of Aquarius. I was busy deciding if getting a haircut would enhance my chances of getting an articling job.

Notice of Annual Meeting

The Annual Meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, June 17, 1999 at 3:00 p.m.** immediately following the regular Benchers' meeting in the Society's Boardroom, 219 Kennedy Street, Winnipeg, Manitoba.

Notice of Bencher's Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, June 17, 1999 at 12:30 p.m.** in the Society's Boardroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of the governing body.

Many Thanks...

The Competence Committee wishes to express its sincere thanks to the many members who volunteered their time to review matters, to conduct practice and management audit reviews and to prepare the necessary reports for the Committee's consideration. The Committee recognizes that the practice of law is demanding and appreciates the invaluable contribution of these practitioners' time.

Chapter 15 of The Code of Professional Conduct states that: "The lawyer should assist in maintaining the integrity of the profession and should participate in its activities." The Committee's volunteers have done just that

Many thanks to the following:

Lori Ainemer
Laurie Allen, Q.C.
Doug Bedford
John Combs
Anthony Dalmyn
Richard Deeley, Q.C.
Lori Douglas
John Jones
Jack King
Don Little, Q.C.
Arthur Rich, Q.C.
Robert Tyler

The Law Society of Manitoba also wishes to thank the following members who have been involved in fee arbitrations as a member of the Legal Fees Advisory Committee within the past year:

Laurie Allen, Q.C.
Elizabeth Beaupré

Judith Blair
Derek Booth
George Chapman, Q.C.
Charles Chappell
John Cram
James Dixon
Lori Douglas
William Doyle
Len Fishman
Jeff Harris
Cynthia Hiebert-Simkin
Brian Juce
Fay-Lynn Katz
Brian Kelsch
Roger King
Sandra Kliman
David I. Marr
Charles Meighen, Q.C.
Garry Miller
Wayne Onchulenko
Anu Osborne
Charles Phelan, Q.C.
Jay Prober
Marianne Rivoalen
Bruce Rutherford
Walter Saranchuk, Q.C.
David Skwark
Douglas Ward, Q.C.
Norman Yusim

Members of the public are appreciative of the opportunity to have fees reviewed without having to proceed to court. This process would not be possible without the generous donation of both time and expertise from our volunteer members.

Bencher and Regular Committee Meeting Attendance

October, 1998 to May, 1999

Name	CIC-A	CIC-B	Competence	Discipline	A & E	PLCF	P&E	Reimb.	Equity	Benchers
Bass, Gordon	5/7									6/6
Braid, Q.C., Art					6/6					6/6
Burns, William		8/8								6/6
Christianson, Q.C., Bjorn		7/8	¾			2/2	6/6			6/6
Curtis, Charles						2/2				6/6
Derksen, Perry [1]					6/6					6/6
Finkbeiner, Q.C., Douglas	7/7				5/6				4/4	6/6
Green, Q.C., Sidney										5/6
Haight, William		7/8								6/6

Johnston, William			4/4							6/6
Killeen, Tim			4/4		5/6					6/6
Leonoff, Q.C., Heather				3	6/6					5/6
Peters, Herb							6/6			6/6
Riedel, Q.C., Wolf	4/4									5/6
Riley, Patrick				1		0/2				5/6
Semchuk, Allen				2		2/2				6/6
Smorang, Q.C., Garth	5/7								1/4	4/6
Spivak, Lori [2]									4/4	6/6
Suche, Q.C., P. Colleen [3]							5/5			5/6
Sullivan, Patti										6/6
Wasel, Lewis			4/4	4						6/6
Wright, Campbell		8/8								5/6
Wright, Dr. Claudia				4					4/4	5/6

Note: There were no Reimbursement Claims Fund Committee meetings during this reporting period. Reflects number of hearings sat as panel member.

Key X/Y:

X = number of meetings attended
Y = number of meetings held

1. Became a Student Bencher September 1998
2. Became a Committee Member October, 1998
3. Became a Committee Member October 1998

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